# DISTRICT OF COLUMBIA
## DOH Office of Adjudication and Hearings

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| DISTRICT OF COLUMBIA<br>DEPARTMENT OF HEALTH<br>Petitioner,<br><br>v.<br><br>JEWELS OF ANN PRIVATE SCHOOL and<br>KENNETH ALEXANDER<br>Respondents | Case No. I-00-40204 |
| DISTRICT OF COLUMBIA<br>DEPARTMENT OF HEALTH<br>Petitioner,<br><br>v.<br><br>JEWELS OF ANN PRIVATE SCHOOL and<br>KENNETH ALEXANDER<br>Respondents | Case No. I-00-40207 |

**ORDER**

Respondents operate a licensed child development facility in the District of Columbia. They are presently subject to the administrative court's final order of June 29, 2001 assessing a total of $1,900 in fines that stem from their liability for violations Title 29, Chapter 3 of the District of Columbia Municipal Regulations. These regulations safeguard the health and safety of children in facilities such as theirs.[1]

[1] A more detailed recitation of the facts and procedural history in this matter may be found in the final order of June 29, 2001.

On July 9, 2001, Respondents filed a motion for reconsideration of my final order with respect to its incorporation of the requirement that all civil infraction fines be paid by lump sum. The motion requested leave to instead pay the fines by periodic payment through a payment plan ordered under the discretionary authority granted to me under D.C. Official Code § 2-1801.03(b)(5). No other relief was sought in that motion.

Respondents' July 9[2] motion provided no objective information regarding their ability or inability to pay the outstanding fines by lump sum payment and instead offered only conclusory allegations that payment in that manner would constitute a business hardship. On August 2, I issued an order permitting Respondents to submit supplemental documentation in support of their motion so that there could be some objective basis for the exercise of my discretion to modify the final order pursuant to § 2-1801.03(b)(5). Respondents were asked to provide routine business documents, including monthly bank statements and available tax returns, on or before August 13. Respondents failed to submit any of the supplemental documentation within the applicable deadline or within an additional nine-day grace period they were granted. Consequently, Respondents' reconsideration motion seeking to alter or amend the final order was denied on August 22, 2001.

In subsequent submissions filed on or about August 23 and September 19, respectively, Respondents repeated their conclusory assertions that payment of a $1900 fine in the manner prescribed by law would have a negative impact on their business. Additionally, these

[2] Unless otherwise specified, all dates cited herein were in 2001.

submissions also sought to re-argue some the merits of the underlying case. Construing these submissions liberally and in favor of the *pro se* Respondents, the administrative court deems them to be a second motion and supporting memoranda seeking reconsideration of the June 29 final order and they will be addressed as such. *See, Dilal v. Kaplan* 956 F.2d 856, 857 (8th Cir. 1992) (supporting liberal construction of *pro se* motions). *See also, Badde v. Strickland*, 175 F.R.D. 403, 404 n.1 (D.D.C. 1997) (*pro se* submissions should be liberally construed by trial courts).

Under D.C. Official Code §§ 2-1804.04 and 1804.05, the June 29 order became final not later than July 23 which was twenty (20) days (fifteen (15) days plus five (5) additional days for service) after the order was served by the OAH docket clerk.[3] Therefore, Respondents' second motion for reconsideration of the final order, filed August 23, was submitted at least 30 days beyond the last date that this administrative court was permitted to review its final order for alteration or amendment.[4] The Court of Appeals has made clear that statutory timelines such as the one mandated by § 2-1804.04 are jurisdictional in nature. They cannot be waived or modified by a presiding administrative law judge. *Zollicoffer v. District of Columbia* 735 A.2d 944, 945-46 (D.C. 1999) (with regard to final orders, time limits for filing have the same mandatory jurisdictional effects in adjudicative agencies as they do in judicial courts). To be

[3] The administrative court's official case file for this matter shows a docket clerk's service certification dated July 3, 2001.

[4] Because Respondents cannot prevail on the merits of the instant motion, I need not decide today whether the absence of an analogue to D.C. Ct. App. R. 4(a)(2) in the rules of the Board of Appeals and Review, when read *in pari materia* with D.C. Official Code § 2-1804.04 and other provisions of the Civil Infractions Act, works to divest OAH of authority to rule on a motion for reconsideration of a final order after 15 or 20 days despite that motion's pendency. See pp. 4-5 *infra*. Moreover, this question will be mooted prospectively by the 2003 implementation of Section 19(e) of the Office of Administrative Hearings Establishment Act. D.C. Act 14-196, 48 D.C. Reg. 11142 (Dec. 21, 2001).

sure, fifteen or twenty days for preparing and serving a post-trial motion may not be much time in some cases. But the courts have left no doubt that strict compliance is required to promote certainty in the finality of judgments. *Circle Liquors, Inc. v. Cohen*, 670 A.2d 381, 385 (D.C. 1996); *Williams, v. Vel Rey Properties, Inc.*, 699 A.2d 416, 418-19 (D.C. 1997). The required deadline clearly was not met with regard to Respondents' second reconsideration motion and the administrative court is therefore without jurisdiction to act on it.

One further issue should be addressed briefly. It might be suggested that an untimely second reconsideration motion directed to a final order should be deemed a motion for relief of the kind permitted under SCR Civil Rule 60(b) and its federal equivalent. *E.g. Derrington-Bey v. District of Columbia Department of Corrections*, 39 F.3d 1224,1226 (D.C. Cir. 1994); *see also, State Farm Mutual Automobile Insurance Co. v. Enid Brown*, 593 A.2d 184, 185-87 (D.C. 1991). Such a motion, if available, would not be subject to the strict statutory timelines imposed by § 2-1804.04. But with that said, and excepting an order procured by a fraud on the administrative court or the like,[5] it is improbable that relief of such an equitable nature would be available from an administrative law judge in the absence of an enabling statute or rule. *See generally*, *In Re Met-L-Wood Corp*., 861 F.2d 1012, 1018 (7th Cir. 1988) (equitable power to set aside judgments merged into Rule 60). And even if such relief were available theoretically, it would not assist Respondents because their August 23 motion provided no factual predicate that could support the narrow grounds under which such relief may be granted. Similarly it failed to

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[5] *See generally, Serzysko v. Chase Manhattan Bank*, 461 F.2d 699, 702 (2d Cir.) 409 U.S. 883 (1972); *OP Sales, Inc. v. CCRS Management Corp*., 1988 U.S. Dist. LEXIS 10168 at *6 (E.D.N.Y. 1988) (fraud on a tribunal prevents the justice system from functioning fairly and impartially and is always reviewable by the presiding judge).

raise any new or overlooked issue regarding the omissions that led to denial of the July 9 motion in the first place. *See* SCR Civil Rule 60(b). In short, there is no lawful basis under which this administrative court can reconsider August 22 order denying respondents earlier motion.

For all of the foregoing reasons, Respondents' second motion for reconsideration, filed August 23, 2001 and supplemented on September 19, 2001, must be denied.

Therefore, based on the entire record in this matter, it is, this _____day of _____, 2002:

**ORDERED,** that Respondents' August 23 motion for reconsideration as supplemented by their September 19 submission is hereby **DENIED**; and it is further

**ORDERED,** that Respondents remain jointly and severally liable for a total of **ONE THOUSAND NINE HUNDRED DOLLARS ($1,900)** as previously described in the administrative court's order of June 29, 2001; and it is further

**ORDERED,** that if the Respondents fail to pay the above amounts in full within twenty (20) calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amounts at the rate of 1 ½% per month or portion thereof, starting from the date of this Order, pursuant to D.C. Official Code § 2-1802.03 (i)(1); and it is further

**ORDERED**, that failure to comply with the attached payment instructions and to remit

full payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' licenses or permits pursuant to D.C. Official Code § 2-1802.03 (f), the placement of a lien on real and personal property owned by Respondents pursuant to D.C. Official Code § 2-1802.03 (i), and the sealing of Respondents' business premises or work sites pursuant to D.C. Official Code § 2-1801.03 (b)(7).

**FILED 02/04/02**

Paul Klein
Chief Administrative Law Judge